Chang et al v. Virgin Mobile USA LLC et al Doc. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, AS NEXT FRIEND OF ALISON CHANG, A MINOR, AND JUSTIN HO-WEE WONG,	§	
PLAINTIFFS,	§	
VS.	§	**No. 3:07-CV-01767**
VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY, LTD., AND CREATIVE COMMONS CORPORATION,	§	
DEFENDANTS.	§	

NOTICE OF REMOVAL/CONCURRENCE IN REMOVAL

Pursuant to 28 U.S.C. §§1441 and 1446, Creative Commons Corporation, defendant in a lawsuit, *Susan Chang, as Next Friend of Alison Chang, a Minor, and Justin Ho-Wee Wong*, Cause No. 07-11386, in the 134th Judicial District Court, Dallas County, Texas, serves this notice of removal/concurrence in removal from that court to the United States District Court for the Northern District of Texas, Dallas Division, on the basis of diversity of citizenship and amount in controversy. The notice/concurrence is based on the following grounds:

1. Both at the time the lawsuit was filed, and at the time of removal, both plaintiffs were, and remain, citizens of the State of Texas.

2. Both at the time the lawsuit was filed, and at the time of removal, all defendants were and remain entities possessing a citizenship other than Texas.

a. Virgin Mobile USA LLC, was, a limited liability corporation incorporated and existing under the laws of Delaware, with its principal place of business and its home office in New Jersey.

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b. The successor to Virgin Mobile USA, LLC, Virgin Mobile USA, L.P., is a Delaware limited partnership with its principle place of business in New Jersey. Each of the partners of Virgin Mobile USA, L.P., were and remain entities possessing a citizenship other than Texas.

(1) The general partner of Virgin Mobile USA, L.P., is VMU GP1, LLC, a Delaware limited liability company with its principle place of business in New Jersey.

(2) The limited partners of Virgin Mobile USA, L.P., are Virgin Mobile, Inc., and Sprint Nextel Corporation. Virgin Mobile, Inc., is a Delaware corporation with its principle place of business in New Jersey. Sprint Nextel Corporation is a Kansas corporation with its principle place of business in Virginia.

c. Creative Commons Corporation is a Massachusetts non-profit corporation with its principal place of business in Massachusetts.

d. Virgin Mobile PTY, Ltd., is an Australian company, with its principal place of business in Australia.

3. This is a civil action. The original petition filed in the State court, a true copy of which has previously been filed in this Court by Virgin Mobile USA, L.P., alleges defendants are liable under various causes of action for actual, punitive damages and other relief. Although plaintiff's pleading does not allege a dollar amount of damages, the amount in controversy for each plaintiff exceeds $75,000 per plaintiff. Virgin Mobile USA, L.P.'s Notice of Removal reflects a pre-suit demand by plaintiff in excess of $75,000. *See also Allen v. R & H Oil & Gas Co.*, 63 F.3rd 1326, 1336 (5th Cir. 1995) (affirming the district court's denial of motion to remand, holding the Court may examine plaintiff's pleading and determine from the face of the pleading alone that it is "more likely than not" that damages will exceed the jurisdictional amount); *HWJ, Inc. v. Burling-*

ton Ins. Co., 926 F.Supp. 593, 595 (E.D. Tex. 1996) (court must first determine whether it is facially apparent from State court pleading that amount in controversy exceeds jurisdictional minimum). The Court may also determine the amount in controversy by examining the damage claims made, and the verdicts awarded, in similar cases. *E.g., De Aguilar v. Boeing Co.*, 11 F.3rd 55, 58 (5th Cir. 1993); *Monticello Ins. Co. v. Patriot Security, Inc.*, 926 F.Supp. 97, 99 n. 9 (E.D. Tex. 1996) (court may draw upon damage awards in similar cases); *Carnahan v. Southern Pacific Railroad Trans. Co.*, 914 F.Supp. 1430, 1431 (E.D. Tex. 1995).

4. By virtue of diversity of citizenship and the amount in controversy the United States district courts have original jurisdiction over this case.

5. Cause No. 07-11386, in the 134th Judicial District Court, Dallas County, Texas, was served on defendant, or the original petition setting forth the claim for relief upon which this notice is based was otherwise first received by defendant, not more than thirty (30) days before the filing of this *Notice of Removal/Concurrence in Removal*, and this *Notice of Removal/Concurrence in Removal* is being filed within one year of the date suit was first filed in State court.

6. Virgin Mobile USA, L.P., has already filed a notice of removal, consenting to removal of the case to this Court.

7. Virgin Mobile PTY, Ltd., has not been served.

8. Copies of all process, pleadings and orders filed and served in the State court have previously been filed in this Court by Virgin Mobile USA, L.P. Similarly, notice of the removal has also previously been filed in the state court by Virgin Mobile USA, L.P.

9. Accordingly, defendant, Creative Commons Corporation hereby removes/concurs in the removal of this case to this Court for trial and determination.

Respectfully Submitted,

/s/John L. Ross

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that one true and correct copy of the foregoing instrument was served on the following lead counsel of record by fax and by first class mail, postage prepaid, this 22nd day of October, 2007:

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/s/John L. Ross
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